

REMARKS

This is in response to the Office Action that was mailed on October 6, 2004. Claim 3 is amended, and new claim 6 is added, based upon disclosure in lines 4-7 on page 7 of the specification. In addition, minor formal amendments are made to claim 1. No new matter is introduced by this Amendment. Claims 1-6 are pending in the application.

THE INVENTION. The invention defined by the claims pending in the application requires that the materials of the tape tab, side flap and hot-melt adhesive be chosen such that the side flap is torn near a joint when pulled at a peel angle of 180° at a speed of 100 m/min. Thus, the tape tab must be made of a material that is more resistant to tearing than the side flap, while the adhesive must provide a strong enough bond so that the side flap tears before the entire adhesive seal is broken.

Claims 1-5 were rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,149,741 (Alper) in view of US 5,549,592 (Fries). Applicants respectfully traverse the rejection.

As apparently recognized by the Examiner, the melt viscosities of the hot melt adhesives used in present invention do not overlap with the melt viscosities of the hot melt adhesives taught in the Alper reference. The Examiner argues, however, that the hot melt viscosity limitations expressly recited in the present

claims are "arbitrary and therefore obvious". In fact, however, the hot melt viscosity limitations of the present invention are not arbitrary. As pointed out in lines 16-28 on page 5 of the specification, hot melt adhesives having conventional viscosities are deficient with respect to providing both good shear resistance characteristics and peeling strength characteristics at the same time. In contrast, an important facet of the present invention is that the use of the hot melt adhesives prescribed by the claims herein in the diaper arrangement described by the claims herein do provide **both** good shear resistance characteristics and good peeling strength characteristics **at the same time**. The Examiner's general comment that "one having ordinary skill in the art would be able to determine through routine experimentation the ideal level of melt viscosity for a particular application" misses the point. The real question is, what is there **in the Alper and/or Fries references** that motivates one of ordinary skill in the art to depart from the melt viscosities taught in the prior art and to seek a hot melt adhesive viscosity that will simultaneously provide both good shear resistance characteristics and good peeling strength characteristics?

According to MPEP § 2143.03, a *prima facie* case of obviousness cannot be said to exist unless the cited references teach or fairly suggest all claim limitations. Since Alper and Fries do not teach or suggest (among other things) the hot melt viscosity aspect of Applicants' invention, a *prima facie* case of obviousness cannot be said to exist with respect to claims 1-6. Accordingly, withdrawal of the rejection of record is respectfully requested.

Claims 3-6 are further distinguished over Alper and Fries by their recitation of "a hot-melt adhesive applied at a spread of 20 to 100 g/m²." As discussed in lines 4-7 on page 7 of the specification, spreading the particular hot melt adhesives required by the present invention at this rate provides a product that satisfies both the requirement for shear resistance characteristics and the requirement for peel strength characteristics and that also resists oozing out during storage. Neither reference of record is seen to suggest this aspect of Applicants' invention. Again, withdrawal of the rejection of record is solicited.

PTO-892 Form

On the PTO-892 Form which was enclosed with the Office Action of March 26, 2004, the Examiner cites Baker et al., U.S. Patent 3,792,801; Lauritzen, U.S. Patent 5,417,789 and Nakanishi, U.S. Patent 4,520,049. However, the Examiner has not indicated why these references have been cited (background of the invention?). Applicants respectfully request that the Examiner clarify for the record why these three U.S. Patents were cited on the PTO-892 Form in question.

Conclusion

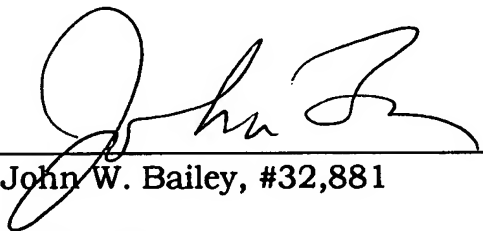
In view of the above amendments and comments, Applicants respectfully submit that the claims are in condition for allowance. A Notice to such effect is earnestly solicited.


Should there be any outstanding issues to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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